

MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

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CLAIMANTS: Holly J. Heser; Gregory P. Heser

CASE 41Q-0123-I-2023

41Q 30134363

41Q 30134365

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Gregory P. Heser and Holly J. Heser are the record owners of claims 41Q 30134363 and 41Q 30134365.

2. Claims 41Q 30134363 and 41Q 30134365 were decreed with a DNRC issue remark indicating the claims were not included in the Preliminary Decree, issued in 2010.

3. Claim 41Q 30134363 was claimed with the source listed as Little Belt Creek. A map was attached to the Statement of Claim showing the point of diversion on Little Belt Creek.

4. During examination of claim 41Q 30134363, the DNRC examiner changed the source to Belt Creek and stated: "Belt Creek was claimed and is correct." A map was attached to the examination documents and clearly shows the source as **Little** Belt Creek.

5. Claim 41Q 30134363 was decreed with the source listed as Belt Creek.

CONCLUSIONS AND PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed a claim as well as any objections filed. Section 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. The DNRC did not have evidence showing the source of claim 41Q 30134363 was incorrect and the source should be changed back to Little Belt Creek.

3. The notice-type issue remarks decreed on claims 41Q 30134363 and 41Q 30134365 have served their purpose and no further proceedings are required because of the remarks.

RECOMMENDATIONS

1. The source for claim 41Q 30134363 should be changed back to Little Belt Creek, as claimed.

2. The issue remarks decreed on claims 41Q 30134363 and 41Q 30134365 should be removed.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Holly J. Heser
Gregory P. Heser
C/O Whispering Willows Ranch
198 Little Belt Rd.
Belt, MT 59412-8123

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30134363 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GREGORY P HESER
% WHISPERING WILLOWS RANCH
198 LITTLE BELT RD
BELT, MT 59412 8123

HOLLY J HESER
% WHISPERING WILLOWS RANCH
198 LITTLE BELT RD
BELT, MT 59412 8123

Priority Date: JUNE 15, 1894

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: LITTLE BELT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2NE	22	19N	7E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SWNW	23	19N	7E	CASCADE
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2NE	22	19N	7E	CASCADE
2			SWNW	23	19N	7E	CASCADE

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30134365 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GREGORY P HESER
% WHISPERING WILLOWS RANCH
198 LITTLE BELT RD
BELT, MT 59412 8123

HOLLY J HESER
% WHISPERING WILLOWS RANCH
198 LITTLE BELT RD
BELT, MT 59412 8123

Priority Date: DECEMBER 31, 1944

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 10.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF LITTLE BELT CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	22	19N	7E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNWSW	22	19N	7E	CASCADE